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EXAMINER

HYLTON, ROBIN ANNETTE

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PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte
DANIEL RAYMOND CERONE, MICHAEL W. NEGUS,
and HOLLIS J. HABEGER

Appeal 2008-0536
Application 09/996,663
Technology Center 3700

Decided: July 30, 2008

Before TONI R. SCHEINER, ERIC GRIMES, and RICHARD M. LEBOVITZ,
Administrative Patent Judges.

SCHEINER, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the final rejection of claims 1-20. The claims stand rejected as anticipated by the prior art. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

STATEMENT OF THE CASE

The present invention is directed to a container “comprising a track including a ramp, a slider, and a . . . reclosable fastener, wherein the slider is movable along the track” (Spec. 1: 8-9).

Claims 1-20 stand rejected under 35 U.S.C. § 102(b) as anticipated by Hupp (International Patent Application WO 01/51378 A1, published July 19, 2001).

Claim 1 is representative, and reads as follows:

1. A container comprising
 - (a) a container body comprising a first fastener portion;
 - (b) a cover comprising a second fastener portion adapted to engage the first fastener portion to form a reclosable fastener having a first end and a second end, wherein the cover defines an X-Y plane when the first fastener portion and second fastener portion are engaged;
 - (c) a track comprising a track fastener portion formed on the reclosable fastener and a ramp extending from the X-Y plane; and
 - (d) a slider movable along the track to open or close the reclosable fastener.

ISSUE

Appellants contend that Hupp “cannot be said to teach a ramp . . . extending from the plane defined by the engaged fastener of the container” (App. Br. 5), while the Examiner contends that Hupp “discloses the same structure” as claimed (Ans. 3).

The issue raised by this appeal, then, is whether Hupp describes a reclosable container with the “ramp” required by the present claims.

FINDINGS OF FACT (FF)

FF 1. The claimed container comprises a container body and a cover. The container body has a first fastener portion, and the cover has a second fastener portion. The first and second fastener portions are adapted to engage each other, and when engaged, form a reclosable fastener with a first end and a second end, lying in an X-Y plane. A track (which carries a slider to open or close the reclosable fastener) corresponds to the reclosable fastener from one end of the reclosable fastener to the other, and further includes a ramp extending from the X-Y plane of the reclosable fastener. (Claim 1.)

FF 2. The Examiner finds that “one of ordinary skill in the art . . . [would] consider the claimed ramp to be an inclined surface, i.e., inclined and extending away from the fastener portions” (Ans. 4).

FF 3. According to the Specification, “[t]he ramp extends from a first end of the reclosable fastener and is at an angle with respect to a plane defined by the first end of the reclosable fastener” (Spec. 2: 26-28). Further according to the Specification, “[t]he ramp extends from the reclosable fastener at an angle to the XY plane and provides a parking location for the slider” (Spec. 3: 8-10).

FF 4. Thus, the ramp is a portion of the track that extends beyond the first end of the reclosable fastener, and does not lie in the plane of the reclosable fastener (i.e., the ramp does not lie in the plane of the cover in its closed position). The slider is movable along the track, including the ramp portion.

FF 5. Hupp describes “a container having upstanding sidewalls, an aperture to access the contents of the container, and a seal therearound. A

cover is provided which is complementary to the seal . . . The cover is applied to the perimetric seal by manipulating a portion thereof, so that the cover is frictionally engaged by the seal” (Hupp 3: 15-20).

FF 6. Hupp’s container is illustrated in Figures 1 and 2, reproduced immediately below:

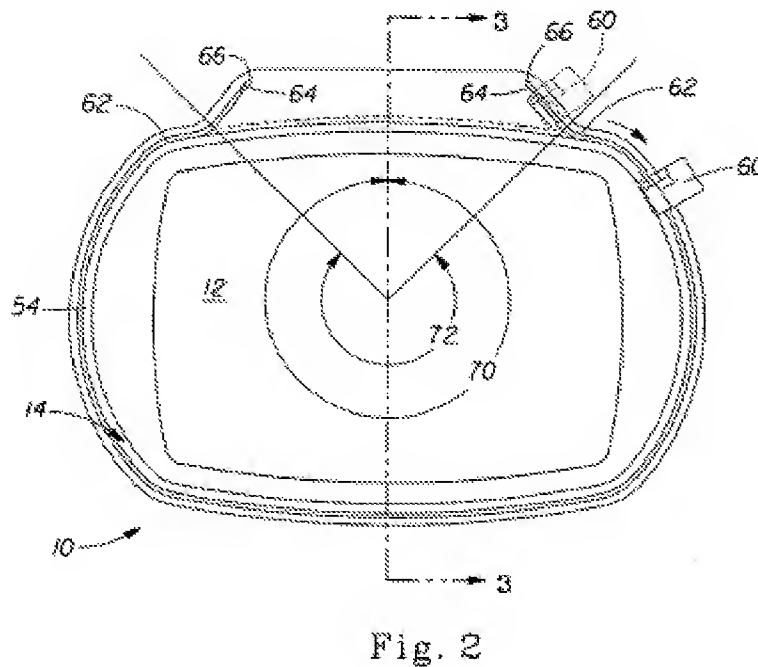
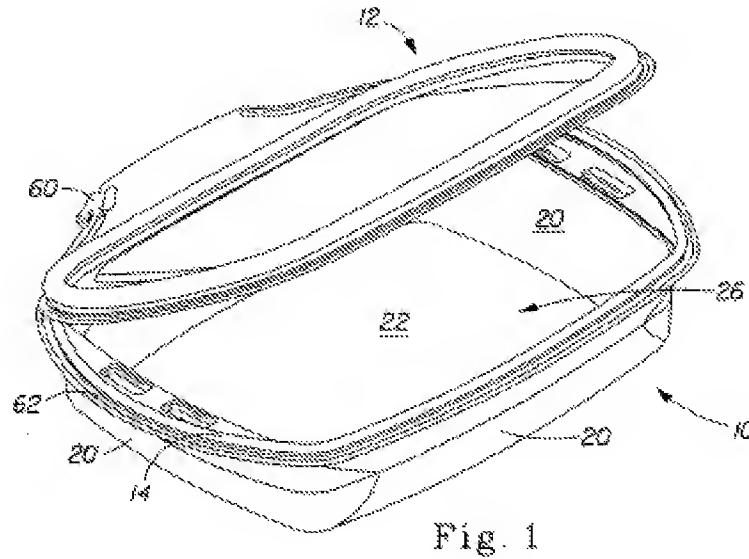


Figure 1 is a perspective view of Hupp's container in the open position, showing "an optional slider not engaging the seal [14] of the container" (Hupp 3: 25-26). Figure 2 is a top plan view of the container "showing the cover in the closed condition and the slider . . . [in] a position which does engage the seal [14]" (Hupp 3: 27-29).

FF 7. Hupp's Figure 3 is reproduced immediately below:

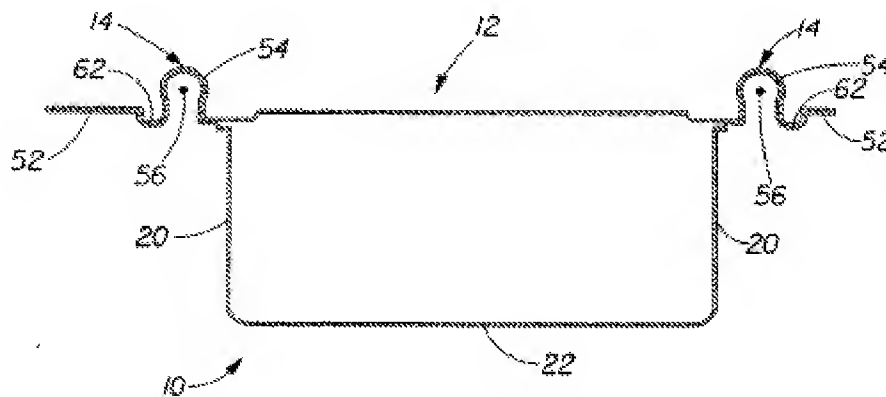


Fig. 3

Figure 3 is a vertical sectional view taken along the line 3-3 of Figure 2 (Hupp 3: 30).

FF 8. Seal 14 on Hupp's container "may be disposed in two mutually perpendicular directions, one substantially parallel to the X direction and the other substantially parallel to the Y direction" (Hupp 8: 9-11). "The seal 14 may be thought of as having a longitudinal axis within the XY plane of the path of the seal 14. The slider 60 compresses the seal 14 in a direction substantially perpendicular to the longitudinal axis" (Hupp 8: 25-27).

FF 9. Seal 14 is depicted in Hupp's Figure 2 as a continuous, curvilinear shape, with no beginning or end.

FF 10. A slider 60 may be used to open and close seal 14 (Hupp 10: 9-13). Slider 60 “may be disposed in a track 62 . . . spaced apart from the seal 14 . . . [but] in operative association with the seal 14” and “preferably congruent with seal 14” (Hupp 10: 14-21).

FF 11. Track 62 “further comprise[s] one or more auxiliary tracks 64 . . . which are not operatively juxtaposed with the seal 14” (Hupp 10: 34-36). “When the slider 60 is disposed in the auxiliary track 64, the slider 60 does not engage . . . the seal 14” (Hupp 11: 5-7).

DISCUSSION

The Examiner rejected claims 1-20 under 35 U.S.C. § 102(b) as anticipated by Hupp.

As discussed above, the claims on appeal require a ramp that extends beyond the end of the reclosable fastener, and which does not lie in the plane of the reclosable fastener (i.e., the plane of the cover in its closed position) (FF 1, 2, 3, 4).

The Examiner acknowledges that Hupp’s written Specification “is silent regarding a ‘ramp’ extending from the fastener portions” (Ans. 4), but contends that “the portion of the segment identified as 64 in Fig. 2 has inclined surface portions which form a ramp extending away from the fastener portions” (*id.*).

As noted by Appellants, however, Hupp’s Figure 2 is a plan view that illustrates the “X-Y plane formed by the closed fastener of the illustrated container” (App. Br. 4; FF 6). We agree with Appellants that “[i]t is not possible to say from this single view that a particular element of the figure lies in the plane, out of the plane or extends from the plane” (*id.*).

Alternatively, according to the Examiner, “[a]s seen in figure 3 of Hupp, the cover panel 12 defines the X-Y plane. The track and fastener portions 14 are seen to extend above the X-Y plane defined by the lid” (Ans. 3). The Examiner contends that “the inclined end surface portions of . . . [Hupp’s] fastener define a ramp and extend from the fastener portion” (*id.*).

We disagree. “[T]he PTO applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions of otherwise that may be afforded by the written description contained in the applicant’s specification.” *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). We don’t agree that the term “ramp,” as used in the claims and the present Specification, is broad enough to include the “end surface portions” of Hupp’s container.

The ramp required by the claims is a portion of the track that extends beyond the track fastener portion (FF 1, 3). It is apparent from the Specification that the ramp is inclined (i.e., at an angle) relative to the X-Y plane of the track fastener portion, and accommodates the slider when the slider is not engaging the track fastener portion of the track (FF 1, 3).

Hupp’s container is similar to the claimed container, in that seal 14, referred to by the Examiner as “track and fastener portions 14” (Ans. 3), is “disposed in two mutually perpendicular directions, one substantially parallel to the X direction and the other substantially parallel to the Y direction” and has “a longitudinal axis within the XY plane of the path of the seal 14” (Hupp 8: 9-11 and 25-27; FF 8). Furthermore, track 62 is congruent

with seal 14 for much of its length (FF 9), and accommodates Hupp's slider along its entire length (Figure 2; FF 6).

However, as depicted in Figure 2, seal 14 is continuous and has no "inclined end surface portions" (FF 6, 8, 9). Moreover, where track 62 diverges from seal 14, we see nothing in Hupp's figures 1-3 to indicate that its longitudinal axis is at an angle to the X-Y plane (FF 6, 7). The "end surface portions" of track 62 are not ramps – they are simply the ends of the track.

The purpose of giving claims their broadest reasonable interpretation during examination is to reduce "the possibility that claims . . . will be given broader scope than is justified" by the prior art. *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (internal citations omitted). The purpose is not to stretch the interpretation of a claim limitation beyond what would be reasonably understood by the skilled worker in the light of the Specification, to read on a prior art structure which could possibly, but not reasonably, be covered by it.

Hupp does not describe a reclosable container with the ramp required by the present claims. Accordingly, the rejection of claims 1-20 as anticipated by Hupp is reversed.

REVERSED

Ssc:

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